IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.4349 of 2004
Date of Decision: 22.5.2007

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Purshotam Dass Chela Amar Dass Vs. Deputy Commissioner, Gurdaspur and others

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Present : Mr.R.S. Ghuman, Advocate for the petitioner.
Mr.N.D.S. Mann, Addl. A.G. Punjab for respondents no.1,2 & 4.
Mr.I.P.S. Doabia, Advocate for respondent no.3.

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CORAM : HON'BLE MR.JUSTICE P. SATHASIVAM
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. Whether Reporters of Local Newspapers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?
3. Whether the judgement should be reported in the Digest ?

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RAJIVE BHALLA, J

Prayer in this writ petition is for the issuance of a writ in the nature of Certiorari for quashing the impugned orders dated 21.11.2003 passed by the Deputy Commissioner, Gurdaspur, exercising the powers of the Commissioner, as also, dated 21.6.2002 passed by the Collector,Batala, Distt.Gurdaspur.

The petitioner is serving as a Pujari in mandir Shiv Swarup Sh. Chander Ashram Bada Talab, which has been in existence for the last about 400 years. The Municipal Committee, Batala, filed a petition for ejectment,

under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973. The said petition was dismissed by the Collector vide order dated 29.4.1988. Respondent no.3 preferred an appeal against the orders of the Collector. The Commissioner, Jalandhar, however, set aside the aforementioned order and vide order dated 6.2.1991 remanded the case to the Collector, Gurdaspur for a fresh decision. The Collector, vide order dated 5.5.1992 allowed the ejctment petition and ordered the petitioner's ejectment. The petitioner, filed an appeal before the Commissioner, Jalandhar Division, Jalandhar. Vide order dated 30.11.1993, the appeal was accepted and the case was remanded to the Collector, with a specific direction to determine the issues with respect to ownership etc. It was also directed that these questions should be decided after framing issues and allowing the parties to lead evidence.

After remand, the learned Collector framed the issues and vide impugned order dated 21.6.2002, decided the case and ordered ejectment of the petitioner.

Aggrieved by the aforementioned order, the petitioner filed an appeal, before the Commissioner,Jalandhar Division, Jalandhar. The appeal was dismissed vide order dated 21.11.2003.

Counsel for the petitioner contends that a perusal of the order passed by the Collector, discloses a blatant violation of the order of remand, passed by the Commissioner on 30.11.1993. Though the learned Commissioner had directed the Collector to return issuewise finding and the Collector framed issues, the order does not disclose any issuewise finding or any finding with respect to the issues raised in the order of remand. The impugned order is non speaking,as it does not assign any reasons. It is

further contended the Deputy Commissioner, exercising the powers of the Commissioner, failed to consider the aforementioned arguments.

Counsel for the respondents, however, contends that as the Collector has categorically held that the petitioner is an unauthorized occupant, nothing further was required to be adjudicated and, therefore, the Collector rightly directed the petitioner's ejectment.

We have heard learned counsel for the parties and perused the paper book.

The Commissioner, Jalandhar Division,Jalandhar, set aside an earlier order of ejectment and remanded the case to the Collector with the following directions :-

> "The pertinent issues for the findings are the ownership the terms and conditions under which the owners transferred the possession to the tenant and in the manner through which the appellants have come into possession. These were basic questions and these questions should not have been decided summarily but only by framing issues, dealing with each and every issue by allowing the parties to lead evidence and only then the competent authority should have passed the order. Accordingly, the appeal is accepted and impugned order is set aside and the case is remanded to the Collector for passing a fresh order keeping in view my observations as above. The parties present before me are directed to appear before him on 24.1.1994."

The Collector, thereafter, framed the following issues :-

"1.Whether the property in dispute is owned by M.C. Batala ? OPA

2. Whether the respondent is in illegal possession of the property in dispute ? OPA.

3. Whether the respondent is liable to ejectment is prayed for / OPA.

4. Relief."

However, the impugned order does not record issuewise findings. The operative part of the impugned order reads as follows :-

""I have considered the arguments submitted by both sides carefully. File of the case has also been perused. The case is more than a decade old. From the record and evidence on file, it is clear that Parshotam Dass is in unauthorised occupation of land in question. Hence, Batala Municipality application dated 30.11.1984 under Section 3 and 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1993 is allowed with costs of Rs.5000/- and Shri Parshotam Dass is ordered to be evicted. He will also pay compensation to the Municipality for unauthorised use and occupation of land in question. The compensation to be paid to the Municipality shall be determined by the Tehsildar, Batala."

A perusal of the extract of the impugned order discloses an abject failure on the part of the Collector, to return any finding, with respect to the issues raised in the order of remand. The Commissioner had by a specific order directed the Collector, to return findings on various

issues, including the question of title. The Collector framed issues, but the impugned order does not record any findings in respect thereof. The Collector, thus, in utter disregard to the order of remand, failed to record any finding much less on the issues framed. Apart from the aforementioned infirmity, no reference has been made to any evidence and no reasons have been assigned, in support of the conclusion that the petitioner is an unauthorised occupant. These infirmities, in our considered opinion, render the order passed by the Collector void. The learned Deputy Commissioner, in the exercise of his appellate jurisdiction, failed to comprehend his infirmity and erroneously dismissed the appeal. We are, thus, satisfied that the impugned are illegal and void.

Consequently, the writ petition is allowed. The orders dated 21.11.2003 and 21.6.2002 passed by the Deputy Commissioner,Gurdaspur exercising the powers of Commissioner,Gurdaspur, and the Collector, Batala, are set aside and the matter is remitted to the Collector for a decision afresh, in accordance with law. Parties are directed to appear before the Collector, Gurdaspur on 19.7.2007. The Collector would decide the case within a period of three months from the aforementioned date.

(RAJIVE BHALLA)
JUDGE

22.5.2007 (P. SATHASIVAM)
GS JUDGE